

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



HOWARD O. WATTS,)	
)	
Complainant,)	Case No. LA-PN-39
)	
v.)	PERB Decision No. 385
)	
LOS ANGELES COMMUNITY COLLEGE)	May 22, 1984
DISTRICT,)	
)	
Employer.)	

Appearances; Howard O. Watts, in pro. per.; Mary L. Dowell, Associate General Counsel for the Los Angeles Community College District.

Before Hesse, Chairperson; Jaeger and Morgenstern, Members.

DECISION

JAEGER, Member: Howard O. Watts appeals the determination by a Public Employment Relations Board (PERB or Board) agent that his public notice complaint against the Los Angeles Community College District (District) failed to state a prima facie violation of section 3547 of the Educational Employment Relations Act (EERA).¹

For the reasons set forth below, we affirm the Board agent's dismissal of Watts' complaint.

¹EERA is codified at Government Code section 3540 et seq. Section 3547 reads:

- (a) All initial proposals of exclusive representatives and of public school employers, which relate to matters within the scope of representation, shall be

PROCEDURAL HISTORY

On December 2, 1981, Watts filed a complaint alleging that the District violated EERA's public notice provisions.

On December 8, 1981, pursuant to former PERB rule 37030(d),² a Board agent sent Watts a notice of

presented at a public meeting of the public school employer and thereafter shall be public records.

(b) Meeting and negotiating shall not take place on any proposal until a reasonable time has elapsed after the submission of the proposal to enable the public to become informed and the public has the opportunity to express itself regarding the proposal at a meeting of the public school employer.

(c) After the public has had the opportunity to express itself, the public school employer shall, at a meeting which is open to the public, adopt its initial proposal.

(d) New subjects of meeting and negotiating arising after the presentation of initial proposals shall be made public within 24 hours. If a vote is taken on such subject by the public school employer, the vote thereon by each member voting shall also be made public within 24 hours.

(e) The board may adopt regulations for the purpose of implementing this section, which are consistent with the intent of the section; namely that the public be informed of the issues that are being negotiated upon and have full opportunity to express their views on the issues to the public school employer, and to know of the positions of their elected representatives.

²At the time this case arose, PERB rules were codified at

deficiency and required him to particularize his complaint.

On December 11, 1981, Watts amended his complaint.

On January 11, 1982, the District filed an answer to Watts' complaint.

On February 2, 1980, an informal conference was held, which failed to settle the dispute.

On February 23, 1982, pursuant to former PERB rule 37030(e),³ the Board agent dismissed Watts' complaint without leave to amend.

FACTS

The complaint alleges that Watts was denied ample opportunity to address the District governing board on certain

title 8, California Administrative Code, section 31000 et seq. Former PERB rule 37030(d) provided:

If the complaint fails to state a prima facie violation of Government Code section 3547, the Regional Director may issue a notice of deficiency to the complainant setting forth the basis for any particularization necessary to state a prima facie violation of Government Code section 3547.

3Former PERB rule 37030(e) provided:

If the complaint fails to state a prima facie violation of Government Code section 3547 and cannot be amended to state a prima facie violation, the Regional Director shall dismiss the complaint. A copy of the complaint and the letter of dismissal shall be served on the employer and the exclusive representative by the Regional Director.

items appearing on the agenda, including three items related to collective bargaining agreements.

One such item was an amendment proposed by the District to the negotiated agreement with the exclusive representative of the certificated employees. Although it appears from the record that Watts did address this matter during his presentation to the District, in fact, this proposal had previously been presented at a meeting of the board both as an informative item and for public response. Another item appearing on the agenda was an amendment proposed by the exclusive representative of the technical and clerical employees. Again, while it appears from the record that Watts addressed himself to this item at the board meeting, this proposal was presented as an informative matter with public comment reserved for the next regularly scheduled board meeting.

The final matter was an item concerning the collective bargaining agreement between the District and the exclusive representative of the maintenance and operations unit. This matter had been presented as an informative item, listed for public comment, adopted by the board, sent to the bargaining table, and had been agreed to by both parties. It was to this matter that Watts was speaking when his five-minute period elapsed.

DISCUSSION

In his appeal, Watts urges the Board to reverse the Board agent's dismissal of his complaint on a number of grounds.

First, Watts argues that the Board agent failed to follow the Board's own rules when he dismissed the complaint after it had been served on the District, the District had filed its answer, and an informal conference had been held. Watts asserts that once a complaint is served on the District, an informal conference is held, or an answer is filed, a prima facie case exists and that, under the pertinent regulations, the case must either go forward to hearing or be withdrawn.⁴

While the Board agent should, indeed, have dismissed Watts' complaint earlier than he did, we disagree that, having failed to do so, his subsequent actions in the case transform a complaint failing to state a prima facie violation into one that does. Thus, while Watts does point to some procedural irregularities in the processing of his complaint, he was in no way prejudiced by these irregularities and they do not, therefore, constitute reversible error. Moreover, the Board has previously held that dismissal of a complaint after an answer was filed or after an informal conference was held does not constitute reversible error in the absence of a showing that the complaint alleged a prima facie violation.

⁴Former PERB rule 37030 (f) provided:

If the complaint is found by the Regional Director to state a prima facie violation of Government Code section 3547, the Regional Director shall forthwith serve a copy of the complaint on the parties to the complaint.

Los Angeles Community College District (8/15/83) PERB Decision No. 331; Los Angeles Community College District (12/31/80) PERB Decision No. 153.5

Next, we turn to Watts' substantive contention that the Board agent erred in concluding that his complaint failed to state a prima facie violation of section 3547.

Two of the agenda items referred to in Watts' complaint concern matters for which the opportunity for public comment had already been afforded. Thus, to the extent that Watts' complaint asserts a right to comment on these items, no prima facie violation is stated. As to the only proposal not previously sunshined, the fact is that Watts, like other members of the public, was on notice by the District, both by the material describing the proposal and the past practice of the District's governing board, that public comment on that negotiating proposal would be heard at a subsequent meeting. Section 3547 does not require a school district to accept such comment at any time the member of the public wishes. The section's mandate is amply satisfied if a time for comment is provided prior to the commencement of negotiations, as was the case here.

⁵In addition to the procedural irregularities cited above, Watts alleges that the Board agent engaged in other acts of misconduct which prejudiced his case. We have carefully reviewed Watts' allegations and find them so lacking in substance that they deserve no comment.

That the District chooses to provide advance notice of such items through its "information" section of the agenda neither violates EERA nor extends the public's right of comment. Similarly, the fact that the District permitted Watts to spend a portion of his time on November 4 speaking to that proposal neither imposed on it a legal obligation to grant his request for more time nor defeated Watts' opportunity, or right, to address that proposal again at the time reserved for pertinent public input. In short, Watts' complaint is based on a claim of statutory right which, in two respects had been satisfied and, in one respect, had not yet matured. No prima facie case was presented.

ORDER

Upon the foregoing Decision and the entire record in this matter, the complaint in Case No. LA-PN-39 is DISMISSED without leave to amend.

Chairperson Hesse and Member Morgenstern joined in this Decision.